

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

PAUL R. MURPHY,
Appellant

v.

D-03-405

SALEM POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

The Appellant, Paul R. Murphy (hereafter "Murphy" or "Appellant"), pursuant to G.L. c. 31, §§42 and 43, filed a timely appeal with the Commission on September 23, 2003 claiming that the Salem Police Department (hereafter "City" or "Appointing Authority" or "Police Department"): 1) did not have just cause to terminate him for allegedly undermining the authority and reputation of the Chief of Police (Section 43

Appeal); and 2) that the City committed a series of procedural errors during the disciplinary process that prejudiced him (Section 42 Appeal).

A pre-hearing was conducted by then-Commission Chairman O’Leary on March 22, 2004 and April 28, 2004 followed by a telephone conference on May 14, 2004 and a status conference on May 21, 2004. On June 4, 2004, the City and the Appellant both filed a Statement of Law regarding the alleged procedural irregularities that are the subject of the Section 42 appeal (Then-Chairman O’Leary subsequently ended his service with the Commission prior to addressing the Statements of Law). On August 11, 2006, the Commission denied the Appellant’s Section 42 appeal “at this time” and scheduled a full hearing. (The reasons for denying the Appointing Authority’s motion are included in the conclusion section below.)

Three days of hearing were conducted on October 2, 2006; December 4, 2006; and January 17, 2007 at the offices of the Civil Service Commission. As no written notice was received from either party, the hearing was declared private. All witnesses, with the exception of the Appellant, were sequestered.

Eight (8) tapes were made of the hearing and both parties subsequently submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

Seventeen (17) Exhibits were entered into evidence (Joint Exhibits 1-10; Appointing Authority Exhibits 11 & 12; Appellant Exhibits 13-17). Based upon the documents entered into evidence and the testimony of:

Called by the Appointing Authority:

- Chief Robert St. Pierre, Salem Police Department;

- Captain Paul Tucker, Salem Police Department;

Called by the Appellant:

- Stanley Usovicz; former Mayor, City of Salem;
- Lieutenant Mary Butler, Salem Police Department;
- Lieutenant Andre Ouellette, Salem Police Department;
- Lieutenant Thomas Griffin, Salem Police Department;
- Retired Captain Robert Callahan, Salem Police Department;
- Captain Rodney Comeau, Salem Police Department;
- (Appellant) Captain Paul Murphy;

I make the following findings of fact:

1. The Appellant, Paul R. Murphy, was a tenured civil service employee of the Salem Police Department. He had been employed by the Salem Police Department for approximately 29 years prior to being terminated on September 9, 2003. (Testimony of Appellant)
2. Murphy began his career with the Salem Police Department as a patrol officer in 1974 and received a series of promotions, eventually rising to the rank of Captain and Executive Officer, the most senior position in the Department after Police Chief. (Testimony of Appellant)
3. Police Chief Robert St. Pierre also joined the Salem Police Department as a patrol officer in 1974, the same day as the Appellant, and worked his way up the ranks to the position of Police Chief. (Testimony of Appellant and Chief St. Pierre)
4. For most of their careers, Chief St. Pierre and the Appellant had a good professional relationship. (Testimony of Appellant)

5. Patricia Murphy is the Appellant's daughter. She first became employed with the Salem Police Department as a reserve officer in 1996 and eventually became a permanent patrol officer in 2001. (Exhibit 12)
6. In April 2002, Patricia Murphy filed a sexual harassment complaint against two senior officers in the Salem Police Department. (Testimony of Chief St. Pierre; Exhibits 11 & 12)
7. In June 2002, the Appellant spoke to the Chief about Patricia's sexual harassment complaint, alleging bias by the Lieutenant who was conducting an investigation into the matter. During this conversation with the Chief, the Appellant referenced a certain letter in the investigative file pertaining to this matter that he claimed his daughter never received. (Testimony of Chief St. Pierre and Exhibit 11)
8. Chief St. Pierre questioned the Appellant about his knowing of this letter if Patricia had never received it. (Testimony of Chief St. Pierre and Exhibit 11)
9. The Appellant divulged to Chief St. Pierre that he had been in Lt. Mary Butler's office examining the files relating to his daughter's sexual harassment complaint. (Exhibit 12; Appendix A; Page 4)
10. Concerned that the Appellant had personally involved himself in a matter relating to his daughter, including going through the files of Lt. Butler, Chief St. Pierre placed the Appellant on paid administrative leave on June 11, 2002, pending the completion of an internal investigation to be conducted by Captain Paul Tucker. (Testimony of Chief St. Pierre and Exhibits 11 & 12)
11. In November 2002, Captain Tucker completed his investigation regarding the Appellant's involvement in personnel issues relating to his daughter Patricia. Captain

Tucker's report on this matter stated in relevant part, "[t]he actions of Captain Murphy detailed in this administrative review call into serious question whether he crossed the line from carrying out his duties as a senior command officer to inappropriately carrying out a personal mission for a family member." (Exhibit 12)

12. As a result of the above-referenced internal investigation, Chief St. Pierre issued a written reprimand to the Appellant in November 2002 and the Appellant was returned to duty as Captain and Chief Executive Officer of the Salem Police Department on December 10, 2002. Based on advice from the Mayor and the City Solicitor, the Chief forwarded the investigative report to the State Ethics Commission. The report was forwarded to the State Ethics Commission on February 4, 2003. (Testimony of Chief St. Pierre and Exhibit 11)
13. The State Ethics Commission subsequently completed a review of the above-referenced matter which was resolved by way of a public disposition agreement dated June 22, 2005. As part of that agreement, Murphy acknowledged violating the state's conflict of interest laws and agreed to pay a fine of \$6,000. (Exhibit 11)
14. Both during and after his paid administrative leave, the Appellant had conversations with and gave correspondence to then-Salem Mayor Stanley Usovicz. (Testimony of Appellant and Mayor Usovicz; Exhibit 13)
15. During his testimony before the Commission, Mayor Usovicz recalled talking to the Appellant at a retirement party in the Fall of 2002, when the Appellant was still on paid administrative leave. Mayor Usovicz testified that during his brief conversation with the Appellant at the retirement party, he told the Appellant, "we'd like to see you back at work." (Testimony of Mayor Usovicz)

16. Sometime in November 2002, Mayor Usovicz saw the Appellant at a City Council meeting and the Appellant asked the Mayor if he would be available to talk over coffee. (Testimony of Mayor Usovicz)
17. Mayor Usovicz and the Appellant subsequently met at the “Fuel” Coffee Shop on Essex Street in Salem. During that meeting, Mayor Usovicz testified that the Appellant talked to him about his disagreement with the Chief regarding “different levels of discipline”. Mayor Usovicz does not believe he informed the Chief about this meeting. (Testimony of Mayor Usovicz)
18. The Appellant subsequently appealed the above-referenced reprimand to Mayor Usovicz and the Mayor decided to have the reprimand removed from the Appellant’s personnel file after one year. (Exhibit 1-9)
19. On January 30, 2003, after he returned from paid administrative leave, the Appellant attended a City Council meeting and handed Mayor Usovicz 15 pages of written material. The first page of the written materials had the heading, “Chief Robert St. Pierre; Violations of City Ordinances and the Revised Rules and Regulations of the Salem Police Department.” (Testimony of Appellant and Exhibit 1-11)
20. The 15-page document prepared by the Appellant is a scathing attack on St. Pierre’s tenure as Police Chief, accusing the Chief of disparate treatment and personal wrongdoing, specifically protesting the written reprimand he recently received from Chief St. Pierre. Of important note, the document makes repeated references to the lack of discipline over the years against one of the superior officers who was the subject of his daughter’s sexual harassment complaint. (Exhibit 1-11)

21. Mayor Usovicz testified before the Commission that, upon receiving the above-referenced written material from the Appellant, he was “dismayed that there was turmoil at the police department.” (Testimony of Mayor Usovicz)
22. Mayor Usovicz forwarded the written material he received from the Appellant to Chief St. Pierre and the City Solicitor. (Testimony of Usovicz)
23. On March 4, 2003, Mayor Usovicz received another letter from the Appellant chastising the Mayor for not calling him in response to the 15-page document he handed to the Mayor on January 30, 2003. The Appellant’s March 4, 2003 letter stated in part, “I have purposely not revealed the information I have to the press because its release will spawn numerous lawsuits against the city and it will embarrass the Department and the City. If you continue to ignore the fact that there is corruption in the police department, by not at least talking to me and seeing the information I have, I will be forced to go to the press and reveal what I know.” (Exhibit 13)
24. Mayor Usovicz testified before the Commission that he viewed the Appellant’s March 4, 2003 letter as a “threat” and, at this point, now viewed the Appellant’s overall actions as a “vendetta” against the Chief meant to “harm a long and distinguished career.” (Testimony of Mayor Usovicz)
25. Based on advice received from the City Solicitor, Mayor Usovicz subsequently appointed an “independent investigator” to investigate the Appellant’s allegations against Chief St. Pierre. (Testimony of Mayor Usovicz & Exhibit 14)
26. On April 15, 2003, the Appellant left a letter for Chief St. Pierre, stating, “It is in your best interest to have a frank, off the record, talk with me about your future with the

department. I am giving you an opportunity to talk to me, before I do what I have to do, an opportunity that was never offered to me. If I don't receive an answer by Thursday, your future with the Department will be in great peril." (Exhibit 1-10)

27. Chief St. Pierre gave a copy of the above-referenced April 15, 2003 letter to Mayor Usovicz and the District Attorney's office and was advised not to meet with the Appellant. (Testimony of Chief St. Pierre)

28. On May 22, 2003, the Appellant filed a criminal complaint against Chief St. Pierre alleging that the Chief "did knowingly file an application for a license to possess a machine gun containing false information..." (Exhibit 7)

29. The Appellant testified before the Commission that he began his "investigation" against the Chief regarding the firearms license in April 2003. According to the Appellant, he began his investigation against the Chief after he was checking the Police Department database to find out the Chief's date of birth to determine the Chief's likely retirement date. (Testimony of Appellant)

30. During the above-referenced review of the Police Department database, in which he was seeking to determine the Chief's date of birth, the Appellant noticed that the database indicated that the reason the Chief was able to carry a machine gun was because he was a licensed firearms instructor. Knowing that the Chief was not a licensed firearms instructor, the Appellant subsequently filed the above-reference criminal complaint against the Chief. (Testimony of Appellant)

31. The above-referenced criminal complaint filed by the Appellant against Chief St. Pierre was dismissed by a Magistrate in Charlestown District Court on June 24, 2003,

ruling, “No Process to Issue; Insufficient evidence having been presented.” (Exhibit 7)

32. A license to carry any kind of firearm by a police officer is not required as the authority to carry weapons arises from the powers of a Chief of Police. (Testimony of Lt. Ouelette; G.L. c. 41, §98)
33. Sometime in May 2003, as part of his self-initiated investigation regarding the Chief’s firearms license application, the Appellant accessed the physical records at the Salem Police Department containing the firearms license of Chief St. Pierre and made copies of the firearms license application filed by the Chief. (Testimony of Appellant and Exhibit 1-12)
34. The Appellant believed that the issue of the Chief’s firearms license showed that the Chief was not holding himself to the same standard that he had held other police officers to. Specifically, the Appellant alleged a former police officer’s (hereafter “former police officer”) employment with the Salem Police Department was terminated for providing false information in making application for a gun license.” (Exhibit 1-12) The Appellant wanted to obtain information about the former police officer as part of his complaint against the Chief regarding his firearms application. (Testimony of Appellant)
35. Chief St. Pierre testified before the Commission that the former police officer was discharged as a result of money missing from the union fund and maintaining residency in two states. (Testimony of Chief St. Pierre)
36. On June 2, 2003, the Appellant went to the Criminal Investigations Division at the Salem Police Department and told then-Sergeant Griffin that he was taking copies of

certain papers concerning the former police officer. (Testimony of Appellant and Griffin)

37. Then-Sergeant Griffin retrieved the files, from which Murphy copied certain materials. Griffin testified before the Commission that he didn't feel as if the Appellant's request was open for discussion as Murphy was a superior officer; and he couldn't disobey an order if he didn't deem the order to be illegal. (Testimony of Griffin)

38. After providing the file to the Appellant, Sergeant Griffin notified Captain Paul Tucker who was out of the building at the time – as well as Captain Rodney Comeau. (Testimony of Griffin) Captain Tucker was in charge of the Criminal Investigations Division.

39. After receiving the call from then-Sergeant Griffin, Tucker in turn called Chief St. Pierre informing him of the Appellant's actions of taking copies of the documents. (Testimony of Chief St. Pierre)

40. At the request of Chief St. Pierre, Captain Comeau met with the Appellant and told the Appellant that he had spoken with the Chief and the Chief wanted the copies of the material he had taken. According to Captain Comeau, the Appellant stated, "you can't have it" and then asked, "is the Chief ordering me?" to which Captain Comeau stated, "yes". Even after being told this was an order from the Chief, the Appellant stated to Comeau, "he can't have it; he better be careful." (Testimony of Comeau)

41. By letter dated June 2, 2003, Captain Tucker, as "Officer in Charge of the Internal Affairs Division" directed the Appellant to return the files of the former officer. The Appellant refused. (Exhibit 1-15; Testimony of Captain Tucker)

42. After the Appellant refused Captain Tucker's order to return the material copied from the former officer's file, Chief St. Pierre sent a letter the same day (June 2, 2003) to Mayor Usovicz informing the Mayor that the Appellant was "searching the records of the Department for information that does not appear to be related to his duties as a police officer for the City of Salem, but rather for the purpose of furthering his personal interests as perhaps that of his daughter". (Exhibit 1-17)
43. The June 2, 2003 letter to the Mayor from Chief St. Pierre also stated in relevant part, "I desire to avoid the appearance of a conflict of interest and therefore delegate to you my powers granted me as the appointing authority for all personnel matters concerning Captain Murphy." (Exhibit 1-17)
44. Immediately thereafter, Mayor Usovicz, on June 2, 2003, summoned the Appellant to his office in the presence of Captain Tucker, now-retired Captain Callahan, and Captain Comeau, and suspended the Appellant with pay, pending the outcome of an internal investigation. (Exhibit 1-18 and Testimony of Mayor Usovicz)
45. At the June 2, 2003 meeting in the Mayor's office, the Appellant was given a letter from the Mayor stating in part, "It is alleged that you violated the rules and regulations of the Salem Police Department. I am, therefore, ordering an internal affairs investigation of this matter. Pending the results of that investigation, I am suspending you from performing all police functions until further notice. You are being suspended with pay, however, that is subject to change pending the outcome of this investigation." (Exhibit 1-18)
46. The above-referenced internal investigation was conducted by Captain Paul Tucker, who had also completed the prior investigation regarding the Appellant's involvement

in matters effecting his daughter. Captain Tucker submitted his report to Mayor Usovicz on July 23, 2003. (Exhibit 1)

47. In his report, Tucker investigated various allegations made by the Appellant. Except for a 1984 incident relating to giving pills to an ill cancer patient, Tucker found no grounds supporting the Appellant's allegations. (Exhibit 1)

48. As referenced above, Mayor Usovicz had also hired an independent investigator to review the allegations leveled against the Chief by the Appellant. The independent investigator, in a report submitted to the Mayor on July 31, 2003, came to the same conclusion as Captain Tucker stating, "none of the allegations and accusations leveled at the Chief has any merit with the exception of the transgression in 1984 when he gave pain medication to a colleague who was suffering from cancer". (Confidential Exhibit 15)

49. One of the matters investigated by Captain Tucker was the allegation by the Appellant that Chief St. Pierre participated in an illegal gambling pool at a local liquor establishment. According to Tucker's report on this matter, one of the Appellant's "sources" regarding this allegation was the Appellant's son and the Appellant never actually talked with the bar owner. At Captain Tucker's instructions, investigators visited the bar in question and determined that there was no truth to the allegation. According to Tucker's report, the bar owner and manager could not even remember the Chief ever visiting the establishment. (Exhibit 1)

50. The independent investigator's report further corroborates the baseless nature of the illegal gambling allegation stating in relevant part, "[t]his allegation is based solely on a payoff sheet seized during an independent ABCC investigation of the bar. Such

names as Mitt Romney, Tiger Woods, and Starsky and Hutch appear besides the nickname ‘Chief’”. Commenting on this baseless allegation, the independent investigator concluded in his report, “Clearly, unsupported allegations such as these are unfair, baseless, and do nothing but besmirch and tarnish reputations and should not be given any weight or merit...In fact, they lend further support to a finding and conclusion that the Captain is engaged in a vindictive pattern of retaliation against the Chief”. (Confidential Exhibit 15)

51. On August 8, 2003, Mayor Usovicz sent a letter to the Appellant informing him of a disciplinary hearing to be held on August 27, 2003 to “determine what disciplinary action, if any, that I should take, up to and including your discharge from your position...” The letter also states, “For a full explanation of your rights, please find enclosed copies of Massachusetts General Laws, Chapter 31, Sections 41-45.” (Exhibit 3)

52. The August 8, 2003, disciplinary hearing outlined ten allegations against the Appellant. The tenth allegation was dropped during the Commission hearing. (Exhibit 3)

53. The first allegation in said letter pertains to Revised Rules and Regulations, Section I, Part D, Paragraph 8-Use of Official Position. The letter states that the Appellant used his position,

“for personal gain by gaining access to departmental records in furtherance of retaliation against the Chief of Police, Robert St. Pierre for his placing you on administrative leave on June 11, 2003, and subsequent filing of charges of Conflict of Interest against you with the Massachusetts State Ethics Commission. In addition, such actions were also taken in an attempt to influence the

outcome of an internal investigation involving your daughter, Officer Patricia Murphy”. (Exhibit 3)

54. The second allegation pertains to Revised Rules and Regulations, Section I, Part E, Paragraph 7-Effectiveness of Orders. The letter states that the Appellant refused, “to follow orders given you on June 2, 2003 to return certain papers taken from a restricted area (Internal Investigations) which was under the exclusive control of the Detective Division.” (Exhibit 3)
55. The third allegation pertains to Revised Rules and Regulations, Section II, Part F, Paragraph 30-Submitting Reports and Paragraph 35-Effectiveness of Orders. The letter stated that Appellant, “[o]n May 22, 2003 [failed] to follow department procedures in filing a criminal complaint against Chief Robert St. Pierre.” (Exhibit 3)
56. The fourth allegation pertains to Revised Rules and Regulations, Section I, Paragraph G, Section 10, Incompetence. The letter stated that Appellant, “in connection with your seeking a criminal complaint against Chief Robert St. Pierre on May 22, 2003, you demonstrated a lack of knowledge of the application of laws required to be enforced.” (Exhibit 3)
57. The fifth allegation pertains to Revised Rules and Regulations, Section I, Part G, Paragraph 1-Conduct Unbecoming and Officer. The letter states that Appellant, “in bringing a criminal complaint against Chief Robert St. Pierre, you engaged in an effort to bring discredit to the Department.” (Exhibit 3)
58. The sixth allegation pertains to Revised Rules and Regulations, Section I, Part G, Paragraph 12-Insubordination. The letter states that Appellant, “[o]n June 2, 2003,

[you] disobeyed orders to return documents to the Internal Affairs Section of Detective Division.” (Exhibit 3)

59. The seventh allegation pertains to Revised Rules and Regulations, Section I, Part G, Paragraph 18-Official Information, Dissemination. The letter states that Appellant, “[b]y taking original papers in May 2003 relative to the gun permits issued to Chief St. Pierre and other internal affair documents relating to former Police Officer Gray, you violated subsections a-e of paragraph 18.” (Exhibit 3)
60. The eighth allegation pertains to Revised Rules and Regulations, Section I, Part G, Paragraph 12-Public Statements. The letter states that the Appellant, “[b]y participating in interviews with a reporter from the Salem News, you released information relative to his seeking a criminal complaint against Chief St. Pierre and alleging other corruption within the Department.” (Exhibit 3)
61. The ninth allegation pertains to Revised Rules and Regulations, Section I, Part G, Paragraph 1-Conduct Unbecoming an Officer. The letters states that the Appellant, “[d]uring November, 2002 to June, 2003, you attempted to threaten and coerce the Mayor and the Chief by alleging corruption in the Department and that you were going to the press unless each met with you, when you had an ongoing duty not to withhold such evidence.” (Exhibit 3)
62. On September 5, 2003, a disciplinary hearing was conducted by Mayor Usovicz. The only witness to testify at the proceeding was Captain Paul Tucker, who conducted the internal affairs investigation into this matter. (Exhibit 4)
63. On September 9, 2003, Mayor Usovicz sent a letter to the Appellant stating in relevant part, “[t]here being no other witnesses (other than Captain Tucker), and in

that I find that Captain Tucker to be creditable, I accept the findings of facts contained in his report and adopt them as my findings. Having done so, and having fully reviewed those facts, I have concluded that you have violated the Rules and Regulations of the Department as set forth in the August 8, 2003 Notice of Hearing. In so concluding and in further considering that you, as the Senior Captain, being second in command, have by your conduct, attempted to undermine the authority and reputation of the Chief of Police. Such actions on your part are most grievous. Because of the grave impact that your conduct has upon the day to day operations of the Department, I have no other reasonable course of action to take than to discharge you from your position as Captain with the Salem Police Department.” (Exhibit 4)

CONCLUSION

Section 42 Appeal

Prior to terminating a tenured civil service employee, G.L. c. 31, § 41 requires that the employee be given “a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority.”

If the Commission finds that the Appointing Authority failed to follow the above-referenced Section 41 procedural requirements and that the rights of said person have been prejudiced thereby, the Commission “shall order the Appointing Authority to restore said person to his employment immediately without loss of compensation or other rights.” G.L. c. 31, §42.

In the instant appeal, the Appellant was placed on administrative leave effective June 2, 2003 pending an internal investigation. At the conclusion of the investigation, the Appellant was given a written notice on August 8, 2003 which explicitly stated that the Appellant may be subject to discipline, up to and including termination. The letter listed ten specific charges that would form the basis of a disciplinary hearing to be conducted on September 5, 2003 in addition to attaching copies of G.L. c. 31, §§41-45.

The Appellant argues that the City failed to comply with the provisions of Section 41 because the June 2, 2003 letter did not include the contemplated action; specific reasons for such action; and did not include a copy of G.L. c. 31, §§41-45. In support of this argument, the Appellant cites Brindle v. City of Taunton, 12 MCSR 149 (1999). In Brindle, the Commission ruled in favor of the Appellant after the Appointing Authority failed to conduct the statutorily required disciplinary hearing. That is not the case in the instant appeal. As referenced above, a disciplinary hearing, for which the Appellant was given notice, was conducted on September 5, 2003.

Moreover, the Appellant's reference to the June 2, 2003 letter is misplaced as this letter simply placed the Appellant on paid administrative leave pending an internal investigation. It was not until after that internal investigation was completed that the Appointing Authority determined that a disciplinary hearing was warranted in order to consider the possible termination of the Appellant. At this point, the Appointing Authority complied with all requirements of Section 41 by giving the Appellant proper notice of the hearing, the contemplated action; and the specific reasons for such action.

Further, the fact that the Appointing Authority referred to the paid administrative leave, for which the Appellant was notified on June 2, 2003, as a paid *suspension* is of no

import. Chapter 31 does not limit an Appointing Authority's ability to temporarily place an employee on paid leave pending an internal investigation, regardless of whether the leave is referred to as "paid administrative leave" or a "paid suspension".

Finally, the Appellant raises a host of other procedural issues which are not persuasive, including the allegation that the Police Chief could not delegate his duties as Appointing Authority to the Mayor. The Appellant argues that the action negated the Mayor's responsibility under the City Ordinances of the City of Salem to perform reviews of such disciplinary decisions in the department. The Appellant in this case, as discussed below, orchestrated a personal and vindictive attack on the Chief of Police. Remarkably, the Appellant now suggests that the Chief's decision to delegate his authority to discipline the Appellant to the Mayor, in order to avoid any appearance of conflict of interest, has resulted in a procedural misstep that has prejudiced his rights. Far from prejudicing his rights, the Chief's decision was clearly meant to ensure the Appellant's right to a fair and unbiased investigation and subsequent disciplinary hearing. For all of the above reasons, the Section 42 appeal is denied.

Section 43 Appeal

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is

“justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See*

Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Appellant, Paul Murphy, was a 29-year veteran of the Salem Police Department prior to his termination. He had a distinguished career serving the people of Salem that saw him rise from the rank of patrol officer to his most recent position as Captain and Chief Executive Officer of the City's police department. Paul Murphy's admirable record of achievement, however, does not excuse his willful, wanton attempt to discredit Salem Police Chief Robert St. Pierre. Almost three years after his termination, Murphy, now collecting taxpayer-funded retirement benefits, remains unrepentant, recalling his self-proclaimed investigation against Chief St. Pierre with a sense of misplaced pride. The City has shown by a preponderance of the evidence that Murphy's actions undermined the Chief of Police and the efficient operation of the Salem Police Department, thus providing the City with reasonable justification to terminate his employment.

Murphy's judgment became permanently clouded as a result of issues related to his daughter Patricia, who joined the Salem Police Department as a reserve officer in 1996 and eventually became a permanent patrol officer in 2001. Convinced that an investigation into a sexual harassment complaint filed by his daughter in 2001 was biased, the Appellant accessed and reviewed his daughter's investigative file. Upon learning of this breach, Chief St. Pierre placed the Appellant on paid leave pending an internal investigation. As a result of that investigation, the Appellant received a written reprimand and the matter was referred to the State Ethics Commission.

The Appellant, clearly angered by the Chief's actions, used his time on paid leave to lay the groundwork for the planned character assassination of Chief St. Pierre. Over the next several months, including after he resumed his duties as Captain and Chief Executive Officer, the evidence shows that the Appellant's primary focus was to seek the ouster of Chief St. Pierre. He made baseless allegations, including the almost comical charge that the Chief was involved in illegal gambling. A subsequent investigation would reveal that the primary basis for the Appellant's charge in this regard was the hearsay of his son and a "payoff sheet" seized by the ABCC from a local bar, which, in addition to the word, "Chief", had other names such as Mitt Romney, Tiger Woods and Starsky and Hutch.

More specifically, the Appellant, as part of his campaign against the Chief, accessed departmental records for the sole purpose of retaliating against the Chief, refused to follow orders to return documents taken from the Internal Investigations Division; filed a baseless criminal complaint against the Chief for the sole purpose of discrediting his reputation; and attempted to threaten and coerce the Mayor and Chief of Police. Previous Commission decisions have well established that officers must comport themselves in a professional and exemplary manner and comply with the orders of their superior officer in order to ensure the efficient and orderly operation of a paramilitary organization.

The Appellant's attempt to coerce the Mayor and Chief of Police is stunning. Believing that he had found a sympathetic ear in former Mayor Usovich, partly as a result of an ill-advised meeting the former Mayor had with the Appellant over coffee while the Appellant was on paid leave, the Appellant began providing the Mayor with documents related to his investigation of Chief St. Pierre. Although somewhat belatedly, then-

Mayor Usovicz quickly realized that the Appellant's efforts amounted to nothing more than a personal vendetta against the Chief. Incensed that the Mayor had not called him personally to discuss the documents he submitted to him in January 2003, the Appellant thought nothing of penning a letter to the Mayor threatening to go to the press if the Mayor did not talk with him. The Appellant's coercive tactics against the Chief were more ominous, leaving the Chief a note that stated in part, "I am giving you an opportunity to talk to me, before I do what I have to do, an opportunity that was never offered to me. If I don't receive an answer by Thursday, your future with the Department will be in great peril."

Those ominous words leave no question that Paul Murphy, seeking the Chief's ouster, was actually seeking to undermine the authority and reputation of the Chief of Police and the City had reasonable justification to terminate him.

For all of the above-reasons, the Appellant's appeal under Docket No. D-03-405 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, and Marquis, Commissioners [Taylor – Absent]) on March 22, 2007.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:

Thomas Barrett, Esq.

Daniel Kulak, Esq.